

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

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COMMENTS OF U S WEST COMMUNICATIONS, INC. AND
U S WEST WIRELESS, INC. TO
FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY

U S WEST supports the Commission's proposal to give wireless contributors a choice of options to report their interstate end user telecommunications revenues for purposes of federal universal service assessment. A wireless contributor may use: (1) the safe harbor percentage, or (2) the contributor's own determination, if it documents how it calculated a lower percentage.

The Commission should require wireless providers who seek designation as an eligible telecommunications carrier to offer, at a minimum, a stand-alone package of basic supported services which includes flat-rated local service with unlimited usage to consumers and Lifeline customers throughout their designated service area.

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COMMENTS OF U S WEST COMMUNICATIONS, INC.
AND U S WEST WIRELESS, INC. TO
FURTHER NOTICE OF PROPOSED RULEMAKING

U S WEST Communications, Inc. and U S WEST Wireless, Inc.

("U S WEST") hereby submit comments in response to the Further Notice of Proposed Rulemaking regarding wireless providers and cable operators in this docket.¹

I. U S WEST SUPPORTS THE COMMISSION'S PROPOSAL TO OFFER WIRELESS CONTRIBUTORS A CHOICE OF TWO OPTIONS TO SEPARATE THEIR INTERSTATE AND INTRASTATE END USER TELECOMMUNICATIONS REVENUES

A. Choice Of Options

In the Notice, the Federal Communications Commission ("Commission") proposes to adopt, on an interim basis, "safe harbor" percentages that reasonably approximate the percentage of interstate wireless telecommunications revenues

¹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278, rel. Oct. 26, 1998 ("Notice" or "Notice & Memorandum Opinion and Order").

generated by each type of wireless telecommunications provider.²

It is necessary for contributors to the federal universal service support mechanism to separate their interstate and intrastate end-user revenues, because contributions for the support mechanism for high-cost areas and low-income consumers are based on the interstate and international end-user revenues of providers of interstate telecommunications services.³

In the NECA II Order, the Commission concluded that, on an interim basis, wireless contributors who cannot determine interstate revenues from their books of account or who cannot derive the line-by-line revenue breakdowns from their books of account may provide “good faith estimates” of these figures.⁴ The Commission directed contributors who choose to use the “good faith estimate” to document how they calculated their estimates and to make that information available to the Commission or the Administrator upon request.⁵

In the instant Notice and associated Memorandum Opinion and Order, the Commission adopts, on an interim basis, another option available to wireless contributors -- “safe harbor” percentages that approximate the percentage of

² Id. ¶ 11.

³ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 9173-75 ¶ 779, 9200 ¶ 831 (1997) (“Universal Service Order”).

⁴ In the Matters of: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd. 12444 (1997) (“NECA II Order”).

⁵ Id. at 12453 ¶ 21.

interstate revenues generated by each type of wireless provider:⁶

Cellular, broadband PCS, digital SMR providers	15% ⁷
Paging providers	12% ⁸
Analog SMR providers	1% ⁹

U S WEST supports the safe harbor percentages as an option. However, U S WEST believes that the percentage recommended for cellular, broadband PCS, and digital SMR providers may be overstated. The Commission assumes that a fixed percentage will eliminate inequities, because it assumes that interstate levels are the same among competing carriers. This assumption is probably incorrect. Because of the geographic size of states and the concentrations of populations in adjoining states on the East Coast, carriers who operate in the East have greater percentages of interstate calls when compared with wireless carriers who provide service to customers in the West. In addition, wireless carriers who are new entrants will generally carry a smaller percentage of interstate calls than established wireless carriers, because the established carriers have completed the build-out of more facilities, including interstate facilities.

The Commission says that wireless contributors may use the applicable safe harbor percentage or, if their interstate telecommunications revenues are less than the safe harbor percentage, they may elect to report their own lower percentage, if they document the method used to calculate that percentage and make that

⁶ Notice & Memorandum Opinion and Order ¶ 11.

⁷ Id. ¶ 13.

⁸ Id. ¶ 14.

⁹ Id. ¶ 15.

information available to the Commission or the Administrator upon request.¹⁰

If a wireless carrier chooses to calculate its own percentage, the Commission says that traffic studies “may represent one possible mechanism” to determine its percentage of interstate telecommunications revenue.¹¹ U S WEST agrees that traffic studies are one mechanism; however, wireless carriers should be permitted to use any other reasonable mechanisms or methodologies including software systems that are now available or under development, accounting methods, etc.

Accordingly, U S WEST understands that wireless contributors may use one of two options: (1) the safe harbor percentage; or (2) the contributor’s own determination, if its percentage is less than the safe harbor and if it documents how it calculated the lower percentage. If both options are available to all wireless contributors, U S WEST supports the Commission’s proposal to give wireless carriers the option of utilizing the safe harbor percentage or utilizing their own determined percentage of interstate revenue. The choice of which option it wishes to use should be left to the wireless carrier.

B. Simplifying Assumptions

The Commission seeks comment on several simplifying assumptions that wireless carriers could use to determine the percentage of interstate wireless telecommunications services. These assumptions could be used if the Commission decides not to adopt the safe harbor percentages. In addition, wireless carriers could use these assumptions together with their own mechanisms and

¹⁰ Id. ¶ 11.

methodologies.¹² The Commission seeks comment on the following proposed assumptions:

(1) Origin of Call

The Commission proposes that cellular and broadband PCS providers should consider the originating point of a call to be the location of the antenna that first receives the call,¹³ even where an antenna serves more than one state. U S WEST does not support this assumption. It is possible that the information would be located in the SS7 message; however, it would be cost prohibitive to extract it. Therefore, U S WEST recommends that the originating point of a call should be the location of the Master Service Controller (“MSC”).

(2) Terminating Point Of A Call

The Commission proposes that a call terminates in a state that corresponds to the area code to which the call was placed.¹⁴ U S WEST supports this assumption.

(3) Major Trading Area

The Commission asks whether Commercial Mobile Radio Service (“CMRS”) traffic that originates and terminates within a Major Trading Area (“MTA”) should be classified as intrastate and all other calls classified as interstate.¹⁵ U S WEST

¹¹ Id. ¶ 23.

¹² Id. ¶ 27.

¹³ Id. ¶ 29.

¹⁴ Id. ¶ 31.

¹⁵ Id. ¶ 32.

does not support this assumption, because it will create customer confusion. Customers may or may not be familiar with the boundaries of MTAs. In addition, many states have established state universal service funds which require wireless carriers to make contributions to the fund based upon their intrastate revenues. Calls which originate and terminate with an MTA may or may not be wholly intrastate.

(4) Roaming Revenues

The Commission asks how roaming revenues obtained by broadband PCS and cellular providers should be classified.¹⁶ AirTouch suggests that the principal provider apply an established percentage to such revenues to approximate the level of interstate usage by roaming customers.¹⁷ U S WEST supports AirTouch's suggestion. The established percentage should be the same percentage that the carrier utilizes to determine its interstate revenues (either the carrier's determined percentage or the safe harbor percentage).

II. WIRELESS CARRIERS WHO SEEK DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER SHOULD BE REQUIRED TO OFFER A PACKAGE OF BASIC SERVICES, AT A MINIMUM, INCLUDING FLAT-RATED LOCAL SERVICE WITH UNLIMITED USAGE

Section 254(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), provides that "only an eligible telecommunications carrier designated under section 254(e) shall be eligible to

¹⁶ Id. ¶ 33.

¹⁷ See id. at n.65.

receive specific Federal universal service support.”¹⁸

A. The Commission’s Current Rules Do Not Ensure Competitive Neutrality Between Wireless And Cable Providers On The One Hand And Price Cap Wireline Incumbent Local Exchange Carriers On The Other Hand

In the Universal Service Order, the Commission adopted the Joint Board’s recommendation to establish competitive neutrality as one of the principles upon which to base policies for the preservation and advancement of universal service.¹⁹ The Commission also said that the principle of competitive neutrality, for purposes of universal service, should include technological neutrality,²⁰ meaning that the Commission would not interpret universal service eligibility criteria to favor or exclude particular technologies even though they may not historically have provided universal service.²¹

In the Notice, the Commission seeks comment on the extent to which the Commission’s rules facilitate or discourage the provision of services eligible for universal service support by wireless telecommunications providers and cable operators,²² including the provision of supported services to low-income, rural, insular, and high-cost subscribers and to schools, libraries, and rural health care providers.²³

¹⁸ 47 U.S.C. § 254(e).

¹⁹ Universal Service Order, 12 FCC Rcd. at 8801 ¶ 46.

²⁰ Id. at 8802 ¶ 49.

²¹ Id.

²² Notice ¶ 44.

²³ Id. ¶ 45.

The Commission's rules today do not ensure competitive neutrality among all eligible telecommunications carriers. However, the uneven application of the Commission's rules is not the result of differences in technologies used. At the outset, the Commission's current rules treat some incumbent local exchange carrier ("ILEC") contributors to the federal universal service support mechanism differently from other contributors such as cable providers and wireless providers.

For example, in the Universal Service Order the Commission concluded that contributors to the universal support programs, such as interexchange carriers and cable operators and wireless providers, would be permitted, but not required, to recover their contributions through the contributing carrier's interstate rates to subscribers. The Commission also said that these contributors should have the flexibility to decide how to recover their universal service contributions.²⁴ However, the Commission also concluded that ILECs who are subject to price cap regulation would only be permitted to add their universal service contributions to their common line basket and to recover their contributions in the same manner as common line charges.²⁵ Price cap ILECs are required to disguise recovery of their universal service contributions.

After the Universal Service Order was released, some long distance and CMRS providers began to bill customers to recover their universal service contributions. As a result of this practice, the Commission and state regulators received questions and complaints from some consumers about the nature and

²⁴ Universal Service Order, 12 FCC Rcd. at 9210-11 ¶ 853.

amount of these charges.

The Commission's contribution recovery rules, which treat non-price cap providers such as CMRS and cable operators differently from price cap local exchange carriers ("LEC"), are unfair and discriminatory. CMRS and cable operators who currently have the flexibility to bill, or not to bill, their customers to recover their universal service contributions can manipulate this billing flexibility as a competitive advantage which is not available to price cap LECs. For example, a CMRS provider may bill a consumer who chooses only a basic package of services to recover the provider's universal service contribution, while the same CMRS provider, as an additional inducement, may advise the consumer that it will not be billed for the CMRS provider's universal service contribution if the consumer selects an enhanced or upscale package of wireless services and vertical features. Price cap LECs do not have this flexibility.

The contribution-recovery billing flexibility which CMRS providers now enjoy under the Commission's rules has the potential for leading to unfair pricing practices as well as to more consumer confusion and controversy, because wireless providers or cable operators can today decide when or if to bill some, all, or none of their customers for their universal service contributions.

In its Comments to the Joint Board's Second Recommended Decision,²⁵ U S WEST proposed an alternative which would address the concern about

²⁵ Id. at 9171 ¶¶ 772-74.

consumer billing complaints which the Commission and state regulators have been receiving and which would restore competitive neutrality among all providers.²⁷

U S WEST urged the Commission in those Comments, and again here, to do away with the artificial distinction between how price cap and non-price cap LECs may recover their universal service contributions, and U S WEST urges the Commission to require all carriers to recover their universal service contributions from their consumers on the consumer's bill as a mandatory retail end-user surcharge against both interstate and intrastate revenues to ensure competitive neutrality.

U S WEST also proposes in these Comments, below, another safeguard regarding the basic service package and flat-rated local usage which wireless providers should be required to offer consumers. To ensure that competitive neutrality is maintained between landline and wireless providers and that consumers have a "viable choice" of providers,²⁸ the Commission should require wireless providers, who seek designation as an eligible telecommunications carrier and therefore become eligible to receive federal universal service support funds, to offer a package of basic services which includes flat-rated local service with unlimited local usage. In addition to the package of basic services, they may also offer premium or upscale packages of services which include supported services.

²⁶ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Second Recommended Decision, FCC 98J-7, rel. Nov. 25, 1998 ("Second Recommended Decision").

²⁷ Comments of U S WEST Communications, Inc. to Joint Board's Second Recommended Decision, CC Docket No. 96-45, filed Dec. 23, 1998 at 15-17.

²⁸ Notice ¶ 50.

However, they must offer a stand-alone package of basic services which includes flat-rated local service with unlimited local usage to ensure that consumers have viable, comparable options from which to choose and to ensure that competitive neutrality as between wireline and wireless eligible telecommunications carriers is restored to the marketplace.

- B. The Commission Should Require Wireless Providers and Cable Operators Who Wish To Become An Eligible Telecommunications Carrier To Offer, At A Minimum, A Stand-Alone Package Of Basic Supported Services Which Includes Flat-Rated Local Service With Unlimited Usage To Consumers And Lifeline Customers Throughout Their Designated Service Area
-

Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with Section 254 throughout the service area for which the designation is received, if the carrier satisfies the following requirements:

- (i) Offers the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (ii) Advertises the availability of such services and the charges therefor using media of general distribution.

(1) Description Of Supported Services

In the Universal Service Order, the Commission defined the “core” or “designated” services which an eligible telecommunications carrier must provide:

- Single-party service

- Voice grade access to the public switched network
- Support for local usage
- Dual Tone Multifrequency signaling or its functional equivalent
- Access to emergency services including 911 and E911 services
- Access to operator services
- Access to interexchange service
- Access to directory assistance
- Toll limitation services for qualified low-income subscribers

(2) Package Of Basic Services

The Commission should require wireless providers and cable providers who seek designation as an eligible telecommunications carrier to offer, at a minimum, a package of affordable basic local exchange services that should be made available separate and apart from all other telecommunications or non-telecommunications services. This serves two purposes: First, consumers will not be required to purchase non-essential services when purchasing their basic telephone service; and Second, it will simplify the effort to confirm that federal support funds are only being used to finance supported services.

The supported services identified by the Commission are services directly related to access to a network, such as the basic access line and usage. Consumers should not be required to purchase incremental services such as, for example, vertical features, roaming, or cable television programming.

Once the package of basic services is identified by the wireless provider or cable operator, it can then be determined if the package provides quality services at

just, reasonable, and affordable rates, consistent with a provider's duties in Section 214. Such a package must include unlimited local usage, because wireline providers such as ILECs who seek designation as an eligible telecommunications carrier provide unlimited local usage.²⁹ To maintain competitive neutrality between wireless and wireline eligible telecommunications carriers, the carriers must be subject to the same service requirements -- including unlimited local usage.

Wireless carriers who choose not to seek designation as an eligible telecommunications carrier and to offer local services as a substitute for local landline services offered by the ILEC are free to design any package and pricing of services for customers in any area they choose to market. Such wireless carriers who do not choose to seek designation to receive federal universal service support should not be subject to any requirement to offer a package of basic service or any requirements to offer local service at a flat rate or to offer unlimited local usage.

The Commission should adopt rules confirming that wireless providers and cable operators who seek designation as an eligible telecommunications carrier must offer, at a minimum, a stand-alone package of basic services at an affordable rate, including local service at a flat rate with unlimited local usage.

(3) Availability Of The Basic Service Package

Section 214(e) requires a provider who seeks designation as an eligible

²⁹ Some state commissions, such as Illinois, permit wireline carriers to charge usage-based rates for local service. If a state commission permits usage-based pricing for wireline local service, wireless carriers who seek designation as an eligible telecommunications carrier should also be permitted to charge comparable usage-based pricing.

telecommunications carrier to provide the supported services throughout the service area. This means that the provider is required to provide the supported services to all takers in the area including, rural, insular, and high-cost customers; low-income Lifeline customers; and qualifying schools, libraries, and rural health care providers.

A wireless or cable provider seeking designation as an eligible telecommunications carrier for a service area must be able to provide supported services throughout the service area through its own facilities, or a combination of its own facilities and resale, as required by Section 214(e)(1)(A). The provider must have the ability to construct new facilities, if that is required to serve a customer. The provider cannot rely upon the ILEC or another eligible telecommunications carrier to build facilities for it.

The Commission should also ensure that the level of service quality offered by wireless providers who seek to become eligible telecommunications carriers is comparable to the service quality provided by the wireline eligible telecommunications carriers who provide service in the same service area. State commissions do not possess jurisdiction over CMRS providers to establish or enforce service quality standards.

Section 254(b)(1) requires that quality universal supported services should be available at “just, reasonable, and affordable rates.”³⁰ However, state commissions do not possess jurisdiction over the rates charged by CMRS providers. Therefore,

³⁰ 47 U.S.C. § 254(b)(1).

the Commission should adopt rules or prescribe standards which will ensure that the rates charged for supported services by wireless carriers who seek designation as an eligible telecommunications carrier will be “affordable.”

The Commission should confirm that wireless providers are subject to these service area, service quality, and affordability obligations if they seek designation as an eligible telecommunications carrier.

(4) Level Of Usage For Local Service

One of the Commission’s concerns is the critical importance of setting an appropriate minimum level of usage for supported local service,³¹ because the pricing structure offered by most wireless carriers is not comparable to the local rates paid by ILEC customers for unlimited usage of their basic telephone service.

In the Universal Service Order, the Commission said:

We are . . . concerned . . . that consumers might not receive the benefits of universal service support unless we determine a minimum amount of local usage that must be included within the supported services. An eligible carrier, particularly one that recovers a substantial portion of its costs through per-minute charges, could conceivably collect universal service support designed to promote affordable use of the network without, in turn, reducing the per-minute rates charged to its customers. Unless we are able to quantify an amount of local usage that must be provided without additional charge to the consumer by carriers receiving universal service support for serving rural, insular, and high cost areas, we believe there is a potential that the consumer would have to pay additional per-minute fees and would not receive the benefits universal service is designed to promote.³²

In the Notice, the Commission said that setting an appropriate minimum level of usage for local service offered by wireless carriers who seek designation as

³¹ Notice ¶ 47.

³² Universal Service Order, 12 FCC Rcd. at 8813 ¶ 67.

an eligible telecommunications carrier is essential, because the pricing packages offered by wireline and wireless carriers are different: "Different technologies have different cost and rate structures, and, in particular, wireline and wireless carriers will be affected differently by the level of flat-rated local usage that a carrier must provide in order to be eligible to receive universal service support."³³ To enable consumers to make a choice between a wireline and a wireless package of basic services, the pricing plans offered to consumers must be comparable.

Because wireless service has traditionally been priced on a usage-sensitive basis, the Commission seeks comment on whether some amount of minimum local usage should be included in the basic service package, and whether a basic service package that includes a certain amount of local usage without additional charge, i.e., flat-rated local usage, would offer consumers a "viable choice."³⁴ At least one wireless provider -- Western Wireless, Inc. -- has advised the Commission that there is "no need to predetermine the rate and usage level" for local service offered by wireless providers who seek to become eligible for universal service support.³⁵ However, this claim ignores the Commission's real world concern: If a wireless carrier who seeks designation as an eligible telecommunications carrier offers customers only usage-sensitive service while the wireline carrier offers flat-rated local service with unlimited local usage, consumers would be unable to make a meaningful comparison between the services offered by the two providers.

³³ Notice ¶ 47.

³⁴ Id. ¶ 50.

³⁵ Ex parte, Western Wireless, Inc., July 15, 1998 at 25.

Customers will be unable to determine if they have viable options.

To ensure competitive neutrality as between wireline and wireless technologies, the Commission should adopt a requirement that wireless carriers who seek designation as an eligible telecommunications carrier must provide unlimited local usage. Landline carriers, such as ILECs, who obtain designation as an eligible telecommunications carrier are required by state law to offer unlimited local usage throughout their service area. To provide customers with the ability to make a meaningful comparison of local services available to them, and to ensure competitive neutrality between providers, the Commission must require wireless carriers who seek designation as an eligible telecommunications carrier to offer unlimited local usage. Only this Commission has authority to impose such a requirement because state commissions do not possess jurisdiction over wireless providers' services or rates.

An alternative to requiring wireless carriers who seek designation as an eligible telecommunications carrier to provide unlimited local usage is suggested in the Notice. Notwithstanding that wireline carriers may be obligated to offer unlimited local usage under state law, actual usage varies from state to state. For example, based upon Statistics of Common Carriers compiled by the Commission, average usage rates for wireline subscribers vary from 52 local calls per month in Maine to 210 local calls per month in Louisiana.³⁶ This average usage rate data is publicly available and widely disseminated.

³⁶ Notice ¶ 52.

Wireless carriers should be required to offer unlimited local usage. A less desirable alternative, because it would be more difficult for customers to make a meaningful comparison with wireline service and because it would not be competitively neutral, would be to require wireless carriers who seek designation as an eligible telecommunications carrier to offer the same number of local calls per month which correspond to the state's reported average wireline per-call local usage rate.

Such a mechanism to quantify local usage offered by wireless eligible telecommunications carriers obviously puts greater operational and administrative burdens on wireless carriers than a simpler requirement to offer unlimited local usage each month. Such an alternative mechanism is not arbitrary and it will change, because the average wireline usage rate in a state will reflect actual changes in subscriber local usage from year to year, and the wireless carrier's corresponding minimum monthly per-call requirement will change accordingly each year.

However, it is significantly more difficult for this Commission and wireline eligible telecommunications carriers to monitor a wireless carrier's per-month local call allowance offered to customers, or to detect violations, to ensure that wireless carriers are offering not less than the same average number of local calls placed by wireline customers each month within a state. Requiring wireless carriers who seek designation as an eligible telecommunications carrier to offer unlimited local usage is plainly the better choice, because it can be easily implemented, administered, monitored, and enforced.

The Commission has defined in a straightforward manner the core services which both wireline and wireless eligible telecommunications carriers must offer and advertise. To ensure that customers, who may purchase supported services from either a wireline or wireless eligible telecommunications carrier, can make a meaningful comparison and can determine whether the supported services offered by a wireless carrier are comparable and offer a "viable option"³⁷ to the supported services offered by a wireline carrier, the Commission should require such wireline carriers to offer unlimited local usage.

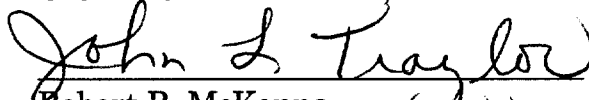
III. CONCLUSION

U S WEST respectfully requests that the Commission adopt rules consistent with these suggestions.

Respectfully submitted,

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January 11, 1999

³⁷ Id. ¶ 50.

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 11th day of January, 1999, I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC. AND U S WEST WIRELESS, INC. TO FURTHER NOTICE OF PROPOSED RULEMAKING** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.


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